

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

Wisconsin Resources Protection
Council, Center for Biological
Diversity, and Laura Gauger,

Plaintiffs,

Case No: 11-cv-45

v.

Flambeau Mining Company,

Defendant.

**DECLARATION OF JAMES B. HUTCHISON IN OPPOSITION TO
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

James B. Hutchison declares as follows under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I make these statements based on personal knowledge and experience.

BACKGROUND, EXPERIENCE AND EXPERTISE

2. I have been employed by Foth Infrastructure & Environment and Foth & Van Dyke (collectively "Foth") since 1990. I am currently employed at Foth as a Lead Environmental Engineer.

3. I am a licensed Professional Engineer in the State of Wisconsin and have acted as a project engineer and consultant to Flambeau Mining Company ("Flambeau" or "FMC") since 1990. Foth has acted as a consultant to Flambeau during this timeframe. My professional work experience at the Flambeau mine site has included development and submittal of regulatory-required documents, evaluating environmental reclamation, and remediation activities and monitoring data related to soils and both surface water and

groundwater hydrology, including but not limited to, such activities related to the Industrial Outlot.

4. I hold a Master's Degree in Civil and Environmental Engineering from the University of Wisconsin-Madison (1986) and a Bachelor's Degree in Civil Engineering from the University of Wisconsin-Platteville (1979).

5. I am a registered Professional Engineer by the State of Wisconsin (E-22484). I have over 20 years of professional experience and expertise in permitting complex metallic mining projects. I have managed projects integrating environmental permitting, mine closure, engineering feasibility studies, site remediation, and environmental impact analysis.

6. I have continuously worked on the Flambeau Mine project since 1990. I worked as Project Manager for environmental permitting during the 1990s and have worked as Lead Engineer on site projects thereafter.

7. The site topography of the Industrial Outlot area at the Flambeau Mine site is depicted in Exhibit A, attached.

8. A photograph depicting key features of the Industrial Outlot area at the Flambeau Mine site is attached as Exhibit B, attached.

9. Following cessation of mining, there was removal of surface soils down to and including the underlying high-density polyethylene (HDPE) liner in some areas within the Industrial Outlot. Also, the sediment within the Surge Pond was also removed after cessation of mining.

10. The biofilter is not in the same exact location as FMC's former surge pond.

11. Flambeau undertook ongoing sampling activities within the Industrial Outlot since cessation of mining. Based upon results of sampling, remediation events were planned and performed with regulatory oversight.

12. The biofilter was not designed nor intended to discharge water from the biofilter directly into Stream C. Rather it was designed and intended to allow water to overflow from the biofilter on occasion to an adjacent wetland.

13. The point of overflow from the biofilter is more than 33 feet away from the lowest point in the surrounding topography where it has been argued by others that a channel from Stream C exists.

14. Ground surface elevations allow surface water to flow northward (away from the direction towards Stream C) from the biofilter under some conditions.

15. The use of a biofilter to manage storm water at a metallic mine is a recognized best management practice of the United States Environmental Protection Agency.

16. Ballast materials were removed from the Industrial Outlot for mitigation purposes during 2003.

17. Background levels of copper concentrations in surface soils were never determined across the mine site prior to mining.

18. In the fall of 2011, Flambeau began another project to improve storm water management at the Industrial Outlot. Among other things, this project involves the conversion of the biofilter into an infiltration basin. When this conversion is completed, the overflow from the biofilter will be eliminated. Flambeau obtained permits from the Wisconsin Department of Natural Resources to complete this work on September 23 and October 12, 2011 and the project is scheduled to be completed in the spring of 2012.

A handwritten signature in blue ink, appearing to read "Jim Hutchison", written over a horizontal line.

James B. Hutchison

Date: December 6, 2011